

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED
MAY 16 1998
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)
)
Implementation of the) CC Docket No. 96-115
Telecommunications Act of 1996:)
)
Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other)
Customer Information)

**REPLY COMMENTS OF SBC COMMUNICATIONS INC. IN SUPPORT OF THE
PETITION FOR TEMPORARY FORBEARANCE OR STAY OF GTE SERVICE
CORPORATION, AND THE REQUEST FOR DEFERRAL AND CLARIFICATION
OF CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

SBC Communications Inc. ("SBC"), on behalf of itself and each of its affiliates, hereby files these reply comments in connection with the pending Petition of GTE Service Corporation ("GTE"),¹ and the Request of Cellular Telecommunications Industry Association ("CTIA").²

All of the many commenters, except MCI in limited respects, urge the Commission to grant both the Petition and Request, and some point out that the same relief should be granted to all carriers, whether wireless or wireline. SBC agrees that GTE and CTIA should be granted the relief they seek and that such relief should be extended to all telecommunications carriers.³ SBC

¹Petition for Temporary Forbearance or, In the Alternative, Motion for Stay, filed April 29, 1998 ("Petition").

²Request for Deferral and Clarification, filed April 24, 1998 ("Request").

³SBC, at 2.

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also supports the view expressed by USTA that the Commission should defer the effective date of both Rule 64.2005(b)(1) and Rule 64.2005(b)(3) for at least 180 days, in order to allow for supplementing the record regarding these rules (whether in anticipation of petitions for reconsideration or for forbearance).⁴

I. THE COMMISSION SHOULD FORBEAR FROM APPLYING, OR DEFER THE EFFECTIVE DATE OF, RULE 64.2005(b)(1) WITH RESPECT TO WIRELESS CARRIERS.

Parties filing comments regarding CTIA's Request⁵ and GTE's Petition⁶ unanimously support that the Commission should forbear from applying, or defer the effective date of, Rule 64.2005(b)(1) with regard to the use of CPNI by CMRS providers to provide CPE and information services. The parties' comments are well-reasoned, well-supported, and highly persuasive. The Commission should not apply Rule 64.2005(b)(1) to CMRS providers for several reasons.

The CPE or handset used in the provision of CMRS is technologically inseparable from the transmission service, and to give the transmission service and the handset distinct treatment under the CPNI rules would result in practices detrimental to both the customer and the carrier. Through Commission-sanctioned practices of CMRS providers, customers expect carriers to market to them a complete CMRS package — including the transmission service, handset and

⁴USTA, at 3-5; see also, U S WEST, at 8-11.

⁵360°, at 7; AirTouch, at 1; ALLTEL, at 1; Ameritech, at 1; AT&T, at 4; BAM, at 1; Bell Atlantic, at 1; BellSouth, at 5; GTE, at 2; NTCA, at 1; Omnipoint, at 3; PrimeCo, at 1-2; RCA, at 4-5; Sprint PCS, at 4; USCC, at 6-7; U S WEST, at 1; Vanguard, at 7.

⁶Ameritech, at 1; AT&T, at 4; Bell Atlantic, at 4; BellSouth, at 5; PCIA, at 1; U S WEST, at 1; Vanguard, at 7.

voice mail and other information services — tailored optimally to meet the customer's mobile communication needs. Temporary forbearance from application of the rule, or a deferral of its effective date, until evidence can be submitted and a complete record developed would cause consumers no harm, while the harm to consumers and carriers would be significant if the rules were to take effect and later revised by the Commission.

II. RELIEF FROM RULE 64.2005(b)(1) SHOULD BE EXTENDED TO WIRELINE CARRIERS' VOICE MESSAGING SERVICES, AND TO CALLER-ID-RELATED CPE AND OTHER SPECIALIZED CPE.

In its initial comments and own Petition, SBC submitted that the Commission should grant interim relief from Rule 64.2005(b)(1) with particular respect to wireline carriers' offerings of voice mail service and related information services, of Caller ID/Call Waiting-related CPE, and of CPE used with advanced telecommunications services like ADSL.⁷ BellSouth states several considerations in support of this relief, emphasizing in particular the call control capabilities these items afford customers within the customers' total service relationship.⁸ As BellSouth also well observes, customers expect that carriers "may use CPNI to market whatever is necessary to make the services within the existing relationship *work*, such as specialized CPE, or *work better*, such as voice messaging services."⁹

⁷SBC, at 9-20. And, as GTE notes, "it is clear that Section 222 applies to all carriers equally." GTE, at 4, citing, CPNI Order, ¶49.

⁸BellSouth, at 7-10. GTE also reiterates that broader relief is needed, with respect to CPE needed to introduce advanced wireline services, and with respect to voice mail, store-and-forward, and short message services that are used integrally with wireline services. GTE, at 2.

⁹Id., at 8.

Thus, the Commission should grant interim relief from Rule 64.2005(b)(1) in order to avoid disrupting customers' expectations that their carriers will be able to meet their total communications needs, including their call management and call control needs.

In addition, interim relief is appropriate with respect to the CPE associated with asynchronous digital subscriber loop services ("ADSL"). With respect to MCI's suggestions,¹⁰ it is true that ADSL modems are not currently readily available through retail channels. However, virtually all of the major modem/CPE and PC manufacturers (3Com, Robotics, Hayes, Compaq and DELL, to name a few) are moving as quickly as possible to provide ADSL modems. It is important to understand that their speed to market is relative to the service provider's ability to introduce ADSL in the marketplace. Any action to retard the service provider's efforts, including application of the Commission's CPNI rules in this context, would hinder widespread availability of ADSL based services, and thus impede progress towards improving data communications in the U.S. as a whole.

III. THE COMMISSION SHOULD GRANT TEMPORARY RELIEF FROM RULE 64.2005(b)(3).

Many commenters submit that winback offers and counter-offers made by CMRS providers are pro-competitive, are within the parameters of the customer-carrier total service relationship, and greatly benefit consumers.¹¹ SBC agrees, and submits that these considerations

¹⁰MCI, at 6-9.

¹¹360°, at 4-5; Ameritech, at 3; AT&T, at 7-8; BAM, at 6-7; PCIA, at 5.

apply equally to the wireline context, as it and other commenters have suggested.¹² In addition, winback efforts can help alleviate the plethora of "slamming" instances.¹³

Against this significant telecommunications industry support, MCI claims that the CPNI winback rule should at least remain applicable to ILECs.¹⁴ This position is unsound and must be rejected on both legal and policy grounds. SBC need not paper this pleading with them, as they have been fully briefed on at least two prior occasions.¹⁵ Suffice it to say that MCI's claim that winback efforts "stifle" competition¹⁶ is bogus. It is embraced by no one, and is only reflective of MCI's resistance to meet us (and other competitors) in the marketplace on the strength of its services and prices.

The Commission thus should temporarily forbear from applying, or defer the effective date of, Rule 64.2005(b)(3).

IV. CUSTOMER NAMES AND ADDRESSES SHOULD NOT BE CONSIDERED CPNI.

Several commenters concur with the position of CTIA that customer names and addresses are not encompassed within the definition of CPNI.¹⁷ SBC agrees with their views. In particular, Section 222(f)(1), subparagraphs (A) and (B), define what may be regarded as CPNI, and no part

¹²SBC, at 21-25; BellSouth, at 10-11; GTE, at 2-3.

¹³Bell Atlantic, at 4; SBC, at 23.

¹⁴MCI, at 12.

¹⁵SBC, at 21-25; CPNI Order, FNPRM, Reply Comments of SBC Communications, Inc., filed April 14, 1998, at 17-19.

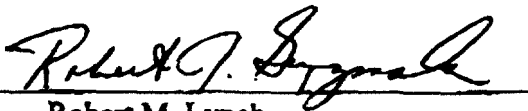
¹⁶MCI, at 14.

¹⁷ALLTEL, at n. 4; Ameritech, at 3; MCI, at 5; GTE, at 3-4.

of the statute can reasonably be read to include customer names and address within its definition.¹⁸ No commenter argues otherwise. Moreover, others observe, as did SBC, that "expectation of privacy" issues simply do not arise with respect to customer names and addresses.¹⁹ The Commission should thus clarify that, whether in the wireless or wireline context, such items do not constitute CPNI.

Respectfully submitted,

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May 13, 1998

¹⁸SBC, at 26.

¹⁹See, e.g., USCC, at 6; see also, GTE, at 3; SBC, at 26-27.

CERTIFICATE OF SERVICE

I, Katie Turner, hereby certify that the foregoing, "REPLY COMMENTS OF SBC COMMUNICATIONS INC. IN SUPPORT OF THE PETITION FOR TEMPORARY FORBEARANCE OR STAY OF GTE SERVICE CORPORATION, AND THE REQUEST FOR DEFERRAL AND CLARIFICATION OF CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION," in CC Docket No. 96-115 have been filed this 13th day of May, 1998 to the Parties of Record.

A handwritten signature in cursive script, reading "Katie Turner", is written over a horizontal line.

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